IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.124 OF 1996

The Karad Urban Co-operative Bank)
Limited, Karad, Guruwar Peth, Karad,)
District Satara.) ... Appellants

Versus

1. Ajitkumar Popatlal Shah,)
Occupation Trader, Resident of)
Satyamev Housing Society)
Limited, Market Yard, Karad,)
District Satara.)
2. Suresh Purushottam Khatavkar,)
Ex-Manager, Taluka Bhag Branch)
of Karad Urban Co-operative Bank)
Limited, Karad, address – 13,)
Shukrawar Peth, Karad, District)
Satara.)
3. Vyankatesh Krishnaji Kulkarni,)
Occu. Service, Ex-Manager and)
Managing Director, The Karad)
Urban Co-operative Bank Ltd.,)
Address – 227, Shukrawar Peth,)
Karad, District Satara.)
4. Vasant Kashinath Bobade,)
Occupation Service, Senior)
Officer, The Karad Urban Co-op.)
Bank Ltd., Karad, Address –)
Krishna Building, Taluka Bhag,)
Shaniwar Peth, Karad, District)
Satara.

1. Ajitkumar Popatlal Shah,)
Occupation Trader, Resident of)
Satyamev Housing Society)
Limited, Market Yard, Karad,)
District Satara.)

5. State of Maharashtra) ... Respondents

Mr. Vinay Patil for the appellants.

Ms. Smita Mane h/f. P.B. Shah for respondent 1.

Mr. C.M. Kothari for respondent 3.

Mr. I.M. Khairadi h/f. Mr. Vinit Naik for respondent 4.

Ms. V.R. Bhosale, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 16TH OCTOBER, 2007.

ORAL JUDGEMENT:-

1. The respondents (original accused 1, 2, 3 and 5 respectively) were charged along with one Vasudeo Vinayak Ghalsasi (original accused 4 – since deceased) in the Court of the Chief Judicial Magistrate, Satara in Regular Criminal Case No.52 of 1985 for offences punishable under sections 120-A, 418 and 420 read with

section 34 of the Indian Penal Code (for short, “the IPC”). During the pendency of the case, accused 4 Vasudeo Ghalsasi died and, therefore, the criminal case abated as against him. Hence, rest of the accused were tried for the above charges. By the impugned judgment and order, learned Chief Judicial Magistrate acquitted the accused. Hence, the complainant - Karad Urban Co-operative Bank Limited has filed the present appeal. For the sake of convenience, I shall refer to the respondents as per their description in the trial. It may also be stated here that during the pendency of the appeal, accused 2 Suresh Khatavkar has died. Therefore, the present appeal has abated as against him.

2. It would be advantageous to begin with the facts of the case. The appellant-bank is dealing in normal banking business of lending against security of grains, goods, gold ornaments, immoveable properties and hundies and also accepts long and short term deposits. In order to get loan from the appellant-bank, a person has to be a member shareholder of the appellant-bank and unless he is accepted as a member shareholder, he is not entitled

to apply for loan or financial accommodation.

3. It is the case of the appellant-bank that accused 1 Ajit Shah enrolled himself as a member shareholder in the appellant-bank in 1978. He introduced himself as a wholesale sugar trader and businessman and opened account with the Head Office of the appellant-bank. He purchased large quota of free sugar from the three sugar complex factories in the area and despatched the quota to the merchants.

4. It is the case of the appellant-bank that accused 1 with dishonest and fradulent intention of cornering huge loans for himself, gave different ghost trade names, opened accounts with the appellant-bank and contracted large loans against fake and fictitious hundies in order to cheat the appellant-bank.

5. According to the appellant-bank, accused 1 opened hypothecation of cash credit and current account bearing No.279 in Talbhag Branch of the appellant-bank in the fictitious trade name

"Ketan Trading Company" in December, 1978, showing himself as the proprietor of Ketan Trading Company, Karad. He also opened nominal saving bank account and never operated the same in the name of Krishna Sugar Depot, under his proprietorship with Talbhag Branch, Karad on 26/5/1980. The said account No. is 349. He opened through proprietor Mohan Pandurang Moholkar account bearing No.352 at Talbhag Branch on 21/6/1980 under the bogus non-existing Firm "E.K. Trading". He opened fourth account with the Head Office on 13/8/1981 in the name of M/s. Ajitkumar Shah. He then opened a current account in the spurious firm "Shah Sales Corporation", through his nephew, who was the dummy proprietor, with Talbhag Branch on 21/12/1981. He also opened one account at Umbraj Branch of the appellant-bank on 10/6/1982 describing himself as resident of Umbraj.

6. In short, it is the case of the appellant-bank that accused 1 opened accounts in the name of five bogus firms in order to manipulate the withdrawals of huge amount for himself against hundies. He dishonestly represented and made it to appear that

all these firms were different trading firms. However, the address of all these firms was the same i.e. Near Kolhapur Naka, Shaniwar Peth, Karad and these firms have no separate offices or separate staff.

7. At the relevant time, accused 2 Suresh Khatavkar, who died during the pendency of this appeal, was the Ex-Manager of Talbhag Branch of the appellant-bank. Accused 3 Vyankatesh Kulkarni was the Ex-Manager and Managing Director of the appellant-bank. Accused 4 Vasudeo Ghalsasi, who died during the pendency of the case was Ex-Assistant Manager of the appellant-bank and accused 5 Vasant Bobade was the section officer of the appellant-bank.

8. It is the case of the appellant-bank that accused 2 was well aware that the firms floated by accused 1 were ghost firms and still he actively collaborated and colluded in the racket of swindling the appellant bank and helped accused 1 in the act of cheating the appellant-bank. According to the appellant-bank, the modus

operandi of accused 1 was to obtain huge clean loans against hundies drawn by himself in the name of one fictitious firm as a drawer against sister fictitious firms, as drawee. He was knowing full well that the drawee was fictitious and the hundi would bounce and would never be accepted. He used to issue fresh hundies of the same kind after the previous hundies used to bounce. All the other accused helped him by accepting such hundies and by immediately discounting and encashing them. Thus, they cheated the appellant-bank to the extent of Rs.28,61,000/- during the period between October, 1982 to December, 1982.

9. It is the case of the appellant-bank that the minutes of the Board of Directors' Meeting were tampered with so as to suit the convenience of accused 1, by accused 3, 4 and 5. Accused 3, 4 and 5 thus deliberately misused and abused their official position in order to abet offences committed by the other accused.

10. It is further the case of the appellant-bank that on 8/10/1982, accused 1 presented one hundi of Rs.40,000/- purported to have

been drawn by Shah Sales Corporation - Proprietor Rajiv Mohanlal Shah, Talbhag Branch on Krishna Sugar Depot, Mandavi (Drawee) knowing that the drawer and drawee were the same i.e. he himself, though shown as different in name and style. The hundi was discounted and purchased by Talbhag Branch Manager - accused 2 as clean bill. The amount was paid to accused 1. It was debited to Inland Bill Purchase account. It was sent to Mandavi through Mandavi Branch of the Sangli Bank for collection. Accused 1 thus cheated the appellant-bank to the tune of Rs.40,000/-.

11. On 21/10/1982, accused 1 presented seven hundies of Rs.40,000/- each (total Rs.2,80,000/-) purported to have been drawn by Shah Sales Corporation - Proprietor Rajiv Mohanlal Shah, Talbhag Branch, on Krishna Sugar Depot, Mandavi (Drawee) knowing that drawer and drawee were the same i.e. he himself, though different in name and style. These hundies were discounted and purchased by accused 2 - Talbhag Branch Manager as a clean bill. The amount was paid to accused 1. It was debited to inland bill purchase account. These hundies were

sent to Sangli Bank Limited, Mandavi Branch for collection. They were returned unpaid by Sangli Bank, without collection, on 21/10/1982. Thus, accused 1 cheated the appellant-bank to the tune of Rs.2,80,000/-.

12. On 29/11/1982, accused 1 purchased four hundies of Rs.35,000/- each and one hundi of Rs.40,000/- (aggregate amount of Rs.1,80,000/-) purported to have been drawn by accused 1 - Proprietor of Ketan Trading Company, Talbhag Branch on Shah Sales Corporation, Dadar, knowing that the drawer and the drawee are the same and the hundi is not likely to be accepted. These hundies were sent for collection through Sangli Bank, Dadar Branch, Bombay. These hundies were returned unpaid by Sangli Bank.

13. According to the appellant-bank, outright purchase of hundies as clean bills, is not authorised by banking rules, practice and procedure. Accused 2 allowed purchase of hundies as clean bills. He had conspired along with other persons and hatched a criminal

conspiracy to cheat the appellant-bank. The appellant-bank was cheated to the tune of Rs.5,00,000/- during the period from 8/10/1982 to 29/12/1982. On these allegations, the appellant-bank filed the complaint before learned Chief Judicial Magistrate, Karad.

14. The evidence before the charge was taken. The appellant-bank examined two witnesses in support of its allegations. Thereafter, the charge was framed.

15. The accused pleaded not guilty to the charge. According to the accused, there were two groups in the Board of Directors and Mr. H.S. Kulkarni became the Chairman of the appellant-bank in December, 1982. He closed all the transactions of accused 1 with malicious intention. In fact, he has deposited Rs.17,00,000/- from 1/3/1993 to 7/3/1993 with the appellant-bank. However, a false case has been filed against him even though the quarrel was between the two groups of Directors.

16. Accused 2 contended that he was made a scape-goat by the

Board of Directors to cover up their mistake. Accused 3 contended that most of the transactions were not done in the Branch Officers, which were under his supervision and that he was a victim of quarrel between the Board of Directors. Accused 5 also contended that he was the victim of the rivalry of two groups of Directors. According to him, he was not concerned with any of the transactions.

17. In support of its case, the prosecution examined PW-1 Shashikant Lomate, who was, at the relevant time, serving as Deputy Chief Executive Officer in the appellant-bank. The prosecution also examined PW-2 Rangnath Kulkarni, who was at the relevant time, local auditor of the appellant-bank. The accused did not lead any evidence. Accused 1 filed a detailed written argument to which I shall advert at the appropriate time.

18. I have heard Mr. Patil, learned counsel appearing for the appellant-bank. At the outset, I must mention that Mr. Patil contended that he has instructions from the appellant-bank to

withdraw the appeal. He submitted that two of the accused who were bank officers have died. He submitted that the appellant-bank is prosecuting recovery proceedings and departmental proceedings against the accused. He submitted that from accused 3 Vyankatesh Kulkarni, the appellant-bank has so far recovered Rs.20,00,000/- and from accused 1 Ajitkumar Shah, the appellant-bank has so far recovered Rs.13,51,979/-. He submitted that the appellant-bank will take all recovery proceedings and enquiry proceedings which it has initiated to their logical conclusions. The appellant-bank wanted to withdraw the appeal so that it can effectively prosecute recovery proceedings. He submitted that besides, the surviving bank officers are old and not keeping good health and the appellant-bank is more interested in recovering money from them. He, therefore, submitted that the appellant-bank may be allowed to withdraw the appeal. This prayer was made on 8/10/2007 and by a speaking order, it was rejected by me by observing that, in effect, the appellant-bank is trying to withdraw the complaint after the charges are framed in a warrant trial, which is not permissible.

19. I have also heard learned counsel appearing for the respondents. It is contended on behalf of the respondents that in the present appeal, the order of acquittal is challenged and unless the view taken by the trial court is perverse, this court cannot interfere with it. It is contended that the trial court's view cannot be called perverse. It is argued that it is a reasonably possible view and this court should not upset the order of acquittal. In support of his submission, learned counsel placed reliance on the judgment of the Supreme Court in ***State of Rajasthan v. Raja Ram (2003) 8 SCC 180.***

20. It is contended on behalf of accused 1 that the appellant-bank's officer who had stepped in the witness box was unable to produce sufficient documents to substantiate the case of the appellant-bank. The defence of the accused is, therefore, probabalized. It is submitted that accused 1 has paid about Rs.13,50,000/- to the appellant-bank and, if there is any balance, he is even willing to pay the same. He submitted that since the

impugned order is not perverse, considering the above facts, it should not be overturned.

21. On behalf of the bank officers, it is contended that intention to cheat the appellant-bank cannot be inferred. It is contended that if this court comes to a conclusion that the appellant-bank was in fact defrauded, it could only be said that the bank officers were negligent. It is submitted that no case is made out for interference with the impugned judgment and order.

22. Since, this is an appeal against an order of acquittal, it is necessary to see what the Supreme Court has said about the scope of an appeal against an order of acquittal and as to when this court can interfere with an order of acquittal.

23. It is well settled by the Supreme Court in ***Raja Ram' s case (supra)*** that unless the judgment of the trial court is perverse, it cannot be interfered with in an appeal against acquittal. If the view taken by the trial court is a reasonably possible view, the order of

acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. An order of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. However, if the view taken by the trial court is a reasonably possible view, it should not be interfered with. In such a situation, it is not open for this court to substitute its own view in place of the trial court's view. It is, therefore, necessary to find out whether the trial court' s judgment is perverse and deserves to be set aside. Needless to say that if the trial court's view is a reasonably possible view, this court will not interfere with it.

24. The appellant-bank has examined PW-1 Shashikant Lomate, its Deputy Chief Executive Officer. It is the case of the appellant-bank that it was the policy of the appellant-bank not to allow purchase of hundies as clean bills. It is submitted that in breach of

this, accused 3 and 5 permitted accused 1 to purchase hundies as clean bills. However, PW-1 Shashikant Lomate has not produced any document to show what was the hundi limit, which was sanctioned to accused 1. PW-2 Rangnath Kulkarni has stated that the hundi limit was sanctioned to accused 1. However, he also could not state the exact hundi limit sanctioned to accused 1. He could not state whether the hundi limit was for clean hundi or for documentary hundi. It is the case of the appellant-bank that accused 1 was running six fictitious firms. However, PW-1 Shashikant Lomate has admitted that he did not make any enquiry as regards existence or non existence of these fictitious or bogus firms. He has stated that he did not make any enquiry with the Registrar of Firms as regards genuineness of these firms. So far as accused 5 Vasant Bobade is concerned, the allegation that he assisted accused 3 is absent in the complaint. For the first time, the appellant-bank has come out with this case in the evidence. It is admitted by PW-1 Shashikant Lomate that at the time of making application for hundi limit, the relevant documents like Certification of Registration of Firm, Balance Sheet, extract of Stock Register,

etc. were not submitted by accused 1 along with the application for hundi limit. During cross-examination, PW-1 Shashikant Lomate has stated that he was in possession of documents as regards sanction of hundi limits to accused 1. However, later on, he has stated that he was not in possession of such documents. He has stated that he has personally seen those documents. He has further stated that he could not state the exact hundi limit and the type of hundi limit sanctioned to accused 1. PW-2 Rangnath Kulkarni, the auditor has stated that he has mentioned in his audit report that a detailed enquiry is necessary so as to find out the real culprits. Therefore, which of the officers have conspired to cheat the appellant-bank is not very clear.

25. The hundies which were dishonoured were signed by Raju Mohan Shah as Proprietor of Shah Sales Corporation. However, the appellant-bank has not chosen to join him as an accused. Accused 1 has not signed any of these hundies received for payment or the guarantee forms. There is no documentary evidence on record to show that accused 1 was a partner of Shah

Sales corporation. No action was initiated against Raju Mohanlal Shah. The appellant-bank did not think it proper to put him up for trial. Learned Magistrate's view that in the absence of Raju Mohanlal Shah, criminal liability cannot be fastened on accused 1, appears to be a reasonably possible view. The appellant-bank has not adduced any evidence to show that accused 1 is also owner of Ketan Trading Company as well as Shah Sales Corporation. It appears that the bank officers were negligent at all stages. However, the reasonably possible view taken by learned Magistrate that they cannot be held criminally liable cannot be faulted. Even in the case of accused 1, the view taken by learned Magistrate is a reasonably possible view. One of the reasons which has persuaded me not to disturb the order of acquittal is the averment made by accused 1 in his detailed written statement. I may quote paragraph 8 of the said written statement, which reads thus.

> *"(8). So far the transaction of accused No.1 which has taken place with complainant bank is a purely civil contract because accused No.1, submitted his proposal to the Bank for Hundi limit and the said*

proposal was accepted by the Bank while accepting the proposal, it was agreed as per the rules of the bank that bank will charge the interest at the high rate of Rs.19.50 and also commission at the rate of 5%. This rate of interest and commission as a consideration and from this, it is clear that transaction which has taken place between the complainant and accused No.1 are purely civil contract and if any breach is committed then the liability which will arise is a civil liability and not a criminal liability. In that contest, it is pertinent to note number of suits were filed by the complainant bank in co-operative court for the recovery of this amount. All the suits are decided. During the pendency of the suit, in the co-operative court, the accused No.1 had filed his written statement and he fairly admitted the transaction and accepted his liability to repay the amount. But due to the financial condition accused No.1 was not in a position to repay the amount in lumpsum. So the accused No.1 asked for the installment and while accepting the liability of repayment, the accused No.1 had paid some amount and some amount is recovered by the bank from sale proceed of the bungalow at Karad and shop at Bombay and recovered there is any balance the accused No.1 is even today is ready to pay the same."

26. This indicates that accused 1 is willing to make good the entire amount. This has also been reiterated by learned counsel for accused 1 in the court. I accept this statement. In the above mentioned peculiar facts and circumstances of the case, I am of

the view that the order of acquittal does not merit any interference it being a reasonably possible view. I may make it clear, however, that I have not interfered with the order of acquittal keeping in mind the principles settled by the Supreme Court as regards interference with the order of acquittal. On the facts before me, it is possible to take a different view but since the view taken by learned Magistrate is a reasonably possible view, I would not like to set it aside and substitute it with any other possible view. The dismissal of this appeal should not, in any way, come in the way of any pending recovery proceedings or departmental proceedings. They shall proceed uninfluenced by any observations made in this judgment. The authorities concerned, shall take the pending proceedings to their logical conclusions entirely on merits and in accordance with law. I hope and trust that in future in matters pertaining to public funds, the appellant-bank is more vigilant and conscious of its responsibility and duties. Appeal is dismissed.

[SMT. RANJANA DESAI, J.]